

In the United States Court of Appeals
for the Ninth Circuit

AUG 5 1979

ATHALIE IRVINE SMITH,

Appellant,

vs.

THE JAMES IRVINE FOUNDATION,
a corporation, et al.,

Appellees.

No. 22607

BRIEF OF APPELLEE KATE L. WHEELER

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This brief is filed on behalf of appellee Kate L. Wheeler who is joined in this action in her capacity as a member and director of defendant The James Irvine Foundation (Cl.Tr. 4-6). Mrs. Wheeler is the granddaughter of the late James Irvine and is one of his heirs-at-law and a beneficiary of one of the testamentary trusts established by his will and under the decrees of final distribution of his estate. If appellant were to prevail in this action, the stock of the Irvine Company in question would be added

to the corpus of these testamentary trusts resulting in a substantial financial benefit to Mrs. Wheeler and her heirs. Despite her personal pecuniary interest in the successful outcome of this case, Mrs. Wheeler retained separate counsel to represent her in opposing appellant's action.

Mrs. Wheeler's sole interest in this case is in seeing that her grandfather's wishes are carried out (Rep. Tr. 3525).

The parties involved in this case have already filed lengthy briefs. In order to avoid unnecessary repetition, Mrs. Wheeler adopts the statement of the case in the Foundation brief from the paragraph beginning at the bottom of page 6 and adopts the arguments and supporting authorities in the Foundation brief in their entirety. For the reasons set forth therein, we respectfully submit that the judgment of the trial court should be affirmed.

Respectfully submitted,

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